

United States Court of Appeals
For the Eighth Circuit

No. 12-2638

United States of America

Plaintiff - Appellee

v.

Da Van Cao

Defendant - Appellant

Appeal from United States District Court
for the District of Nebraska - Lincoln

Submitted: February 26, 2013

Filed: February 27, 2013

[Unpublished]

Before BYE, ARNOLD, and SHEPHERD, Circuit Judges.

PER CURIAM.

Da Van Cao appeals after he pled guilty to a drug offense in violation of 18 U.S.C. §§ 841(a)(1), (b)(1)(A)(vii), and 846, and the district court¹--upon determining

¹The Honorable Richard G. Kopf, United States District Judge for the District of Nebraska.

that Mr. Cao was ineligible for safety-valve relief--imposed the applicable statutory minimum prison term of 120 months. His counsel has moved to withdraw, and has filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing that Mr. Cao's prison term is excessive.

Upon careful review, we first conclude that the district court did not abuse its discretion in determining that Mr. Cao was ineligible for safety-valve relief. See 18 U.S.C. § 3553(f) (limitation on applicability of statutory minimums in certain cases; setting forth five-part standard for safety-valve relief); United States v. Guerra-Cabrera, 477 F.3d 1021, 1026 (8th Cir. 2007) (concluding that, because record supported district court's findings that defendants had failed truthfully to provide all information they had about their offenses, district court did not abuse its discretion in determining that they were ineligible for safety-valve relief). We further conclude that Mr. Cao's 120-month prison term is proper, and not excessive. See United States v. Watts, 553 F.3d 603, 604 (8th Cir. 2009) (per curiam) (noting district courts' lack of authority to impose sentences below congressionally mandated statutory minimums). Finally, having independently reviewed the record under Penson v. Ohio, 488 U.S. 75 (1988), we have found no nonfrivolous issues for appeal.

Accordingly, we affirm the judgment of the district court, and we grant counsel's motion to withdraw, subject to counsel informing Mr. Cao about procedures for seeking rehearing or filing a petition for certiorari.